

**TO: Hon. Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure**

**FROM: Ed Carnes, Chair
Advisory Committee on Federal Rules of
Criminal Procedure**

**SUBJECT: Report of the Advisory Committee on Criminal
Rules**

DATE: May 15, 2003

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II. Action Items—Summary and Recommendations.

The Advisory Committee on the Criminal Rules met on April 28 and 29, 2003, and acted on a number of proposed

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amendments. This report addresses matters discussed by the Committee at that meeting. First, the Committee considered public comments on proposed amendments to the following Rules:

- Rule 35. Correcting or Reducing a Sentence; Addition of Definition for Sentencing.

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- Rules Governing § 2254 and § 2255 Proceedings and Accompanying Forms.

As noted in the following discussion, the Advisory Committee proposes that those amendments be approved by the Committee and forwarded to the Judicial Conference.

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III. Action Items—Recommendations to Forward Amendments to the Judicial Conference

A. Summary and Recommendations.

At its June 2001 meeting, the Standing Committee approved the publication of proposed amendments to Rule 35 for public comment and in June 2002, the committee approved proposed amendments to . . . the Rules Governing § 2254 and § 2255 Proceedings. The comment period for the proposed amendment to Rule 35 was closed on February 15, 2002, and the comment period for the proposed amendments to the other rules closed on February 15, 2003. In response, the Advisory Committee received written comments from a number of persons and organizations commenting on all or some of the Committee's

proposed amendments to the rules. The Committee has made several changes to rules and recommends that all of the proposed amendments be forwarded to the Judicial Conference for approval and transmittal to the Supreme Court. The following discussion briefly summarizes the proposed amendments.

B. ACTION ITEM—Rule 35. Correcting or Reducing a Sentence.

Several years ago, after the restyled rules were published for comment, the Committee considered an issue raised by members of the Appellate Rules Committee regarding possible conflict over what was meant by the term “imposition of sentence” in original Rule 35(c) (now restyled Rule 35(a)), which serves as the triggering event for the 7-day period for making corrections to the sentence. Initially, the Committee decided to use the term “oral announcement of sentence,” but then later determined that the rule should be more consistent with Appellate Rule 4 and any other rules that might specify when the right to appeal is triggered. Thus, it proposed an amendment that would include in the rule a new definitional section that stated that for purposes of Rule 35, sentencing meant “entry of the judgment.” That amendment was published for comment and the comment period expired in February 2002.

At the April 2002 meeting, the Committee considered the seven written comments on the proposed amendment. The comments were mixed. While the Department of Justice, the Federal Bar Association, the Committee on the U.S. Courts of the State Bar of Michigan, and the NACDL opposed the amendment, the State Bar of California Committee on Federal Courts, the Federal Magistrate Judges Assn., and Judge David Lawson endorsed the amendment.

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The public comments opposing the amendment cited concerns about interjecting more uncertainty into the area, expanding the time during which the court could change the sentence, and adopting the minority view of the circuit courts that have addressed the issue. On the other hand, those endorsing the amendment believed that it would clarify an ambiguity in the rule and make it more consistent with Appellate Rule 4.

Following additional discussion the Committee voted to use the term “oral announcement” throughout Rule 35 and to forward the amendment to the Standing Committee for action. However, shortly after the Criminal Rules Committee’s meeting, it became apparent that approach would result in unwieldy language. Thus, the rule was not forwarded to the Standing Committee in June 2002. Instead, at its September 2002 meeting, the Committee reverted to the original concept of including a special definition of sentencing and instructed the Reporter to prepare the draft. That draft was considered and approved at the Committee’s April 2003 meeting.

The Committee does not believe that the proposed amendment needs to be republished. A copy of the rule, Committee Note, summary of the written comments, and a GAP report are at Appendix A.

Recommendation—The Committee recommends that the amendments to Rule 35 be approved and forwarded to the Judicial Conference.

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**D. ACTION ITEM—Rules Governing § 2254 and
§ 2255 Rules and Accompanying Forms**

Following successful restyling of the Criminal Rules, the Committee obtained approval from the Standing Committee to proceed with a review of the Rules Governing § 2254 and § 2255 Proceedings (the “Habeas Rules”). Under the chairmanship of Judge David Trager, and with the assistance of the style subcommittee, the Committee recommended a number of style and substantive changes to the rules themselves and also to the accompanying official forms. The rules and forms were published for comment in 2002 and the comment period ended on February 15, 2003. The Committee received a large number of comments from individuals and organizations.

At its April 2003 meeting, the Committee considered those comments and made a number of changes to the rules as published. A copy of the rules, Committee Notes, forms, summary of written comments, and GAP reports are at Appendix C.

Recommendation—The Committee recommends that the amendments to the Rules Governing § 2254 Proceedings and the Rules Governing § 2255 Proceedings, and the forms accompanying those rules be approved and forwarded to the Judicial Conference.

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Attachments:

Appendix A. Rule 35. Correction or Reduction of Sentence.

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Appendix C. Rules Governing § 2254 and § 2255 Proceedings

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